

Matter of Callaway
Del. Supr.No. 121, 2000 (4/25/01)
Board Case No. 34, 2000

Disciplinary Rules: DLRPC 1.2(a) and 1.3

Sanctions Imposed: Two-year public probation.

The Delaware Supreme Court approved the Report of the Board on Professional Responsibility (the "Board"), and ordered that E. Stephen Callaway, Esquire (the "Respondent"), a member of the bar since 1974, practicing with the office of the Public Defender in Georgetown, be sanctioned with a two-year public probation, subject to certain conditions.

The Respondent represented a client in a criminal matter. After trial in the Superior Court, the client was found guilty and sentenced. The client had informed the Respondent at the time of the suppression hearing and following conviction that he wanted to appeal his conviction. The Respondent failed to draft and file an appeal on behalf of the client. The client prepared a notice of appeal, which was rejected as having been untimely filed. The Supreme Court found that the Respondent was ineffective and deprived the client of the right to reasonable representation, stating: "Citizens are entitled to competent counsel for trial and appeal of convictions. A failure to follow the appeal procedure impairs the integrity of the criminal justice system, contributes to a lack of public confidence in judicial administration, and may unfairly cause the loss of liberty." The case was remanded for resentencing and new counsel for the client was appointed.

The Respondent admitted that he violated Delaware Lawyers' Rules of Professional Conduct 1.2(a) (failure to abide by a client's decision) and 1.3 (lack of reasonable diligence and promptness in representing a client) by failing to file a timely notice of appeal in the Delaware Supreme Court pursuant to the express wishes of the client. The two-year public probation commenced on August 22, 2001, the date of the expiration of the Respondent's pre-existing period of probation, and was subject to the condition that the Respondent's supervising attorney in the Public Defender's Office review the Respondent's professional activities as a Public Defender and his case load and communications with clients to determine whether the Respondent is acted with reasonable diligence and promptness in

representing his clients and abided by his clients' decisions with respect to the objectives of representation. Other conditions include certain reporting requirements and payment of costs of the disciplinary action.

The Board considered as aggravating factors that in 1986, the Respondent was publically reprimanded for neglect of a client matter and conduct involving deceit and misrepresentations; that in 1999, the Respondent received a private admonition for violations of Delaware Lawyers' Rules of Professional Conduct 1.3 (lack of diligence in a client matter), 1.15(b) (failure to promptly deliver to a third person funds that the third person is entitled to receive), and 8.4(d) (failure to bring a known conflict to the attention of a trial judge); and that in 2000, the Respondent received a public reprimand and one-year probation for violations of Delaware Lawyers' Rules of Professional Conduct 1.2(a) and 1.3 for failing to file a timely notice of appeal. The Respondent's misconduct in the latter case occurred during the same time period as the events underlying the sanction in the current disciplinary matter. Also in aggravation, the Board found that the Respondent has substantial experience in the practice of law, and that clients of the Public Defender's Office do not have the ability to select counsel of their choice although they are entitled to the same competent and diligent representation as any other client.

In mitigation, the Board considered the absence of any dishonest or selfish motive, the Respondent's full disclosure to and cooperation with disciplinary authorities, and the Respondent's expression of remorse. The Board recognized the present disciplinary matter and the disciplinary matter giving rise to the one-year probation have very similar fact patterns. Had both cases been investigated and evaluated at the same time, the cases would have been consolidated and a single public probation imposed.